

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**PAULINA NAVARRETE
1127 EASTON AVE
WATERLOO IA 50702-4042**

**PACKERS SANITATION SERVICES INC
PO BOX 340
KIELER WI 53812**

APPEAL NO. 20A-UI-14204-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within 15 days from the mailing date below the administrative law judge's signature on the last page of this decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
OR
Fax Number: (515)281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

Claimant Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Handbook for Employers: <http://www.iowaworkforce.org/ui/uiemployers.htm>

Employer account access and information: <https://www.myiowaui.org/UITPTaxWeb/>

National Career Readiness Certificate or become a member employer utilizing internships through Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAULINA NAVARRETE
Claimant

APPEAL NO. 20A-UI-14204-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 04/19/20
Claimant: Respondent (2R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment
Iowa Code Section 96.3(7) – Overpayment
Public Law 116-136, Section 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 29, 2020, reference 01, decision that allowed benefits to the claimant for the period beginning May 10, 2020, provided she met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off. After due notice was issued, a hearing was held on January 7, 2021. Claimant, Paulina Navarrete, participated. Andrea Ramirez represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. The parties waived formal notice on the question of whether the claimant was eligible for Federal Pandemic Unemployment Compensation (FPUC).

ISSUES:

Whether the claimant was able to work and available for work for the period of May 10, 2020 through September 12, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period of May 10, 2020 through September 12, 2020.

Whether the claimant was overpaid regular benefits for the period of May 10, 2020 through September 12, 2020.

Whether the claimant was overpaid Federal Pandemic Unemployment Compensation for the period of May 10, 2020 through September 12, 2020.

Whether the employer's account may be charged for benefits for the period of May 10, 2020 through September 12, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed by Packers Sanitation Services, Inc. as a full-time Office Coordinator. Until a couple months ago, the claimant's hourly wage was increased

to \$17.25. Prior to that wage increase, the claimant's hours wage was \$16.25 for two years. The claimant's work hours have all relevant times been 7:30 a.m. to 4:00 p.m. Monday through Friday.

The claimant established an original claim for unemployment insurance benefits that was effective April 19, 2020. Iowa Workforce Development set the claimant's weekly benefit amount for regular benefits at \$384.00. The claimant established the claimant in response to being temporarily laid off from a second, part-time employment. The claimant made weekly claims for each of the weeks between April 19, 2020 and September 12, 2020.

The weekly claims for the weeks May 10, 2020 through June 6, 2020 were untimely filed on June 22, 2020 and therefore were not considered by IWD.

Throughout the claim period the claimant continued to work full-time for PSSI. The gross weekly wages for the full-time work with PSSI totaled at or around \$650.00.

Though the claimant consistently under-reported her wages when making the weekly claims, the under-reporting for the weeks that ended June 13, July 4, July 25, and August 1, 2020 was sufficiently extreme to result in payment of regular benefits and federal benefits for those weeks. The claimant received \$216.00 in regular benefits for the week that ended June 13, \$118.00. The claimant received \$118.00 in regular benefits for the week that ended July 4, 2020. The claimant received \$384.00 in regular benefits for the week that ended July 25, 2020 and another \$384.00 for the week that ended August 1, 2020. In total, \$1,102.00 in regular benefits were paid to the claimant those four weeks. IWD also paid \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) to the claimant for the weeks that ended June 13, July 4, and July 25, 2020. In total, IWD paid the claimant \$1,800.00 in FPUC benefits for those weeks. IWD also paid the claimant \$300.00 in Lost Wages Assistance (LWA) for the week that ended August 1, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was employed full-time with PSSI and received full-time wages from PSSI throughout the period of her claim, April 19, 2020 through September 12, 2020. At no time during that period was the claimant unemployed within the meaning of the law. Because the claimant was working full-time, she did not meet the unemployment insurance "availability" requirement. The claimant is not eligible for benefits for the period of April 19, 2020 through September 12, 2020. The employer's account will not be charged for benefits for that period.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Iowa Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

The claimant was not eligible for the \$1,102.00 state benefits she received for four weeks between June 7, 2020 and August 1, 2020. Those benefits are an overpayment of benefits that the claimant must repay.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits for the period of April 19, 2020 through September 12, 2020, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC) for that period. The \$1,800.00 in FPUC benefits the claimant received for three weeks between June 7, 2020 and July 25, 2020 is an overpayment of benefits that the claimant must repay.

This matter will be remanded to the Benefits Bureau for entry of an additional overpayment decision regarding the \$300.00 in Lost Wages Assistance (LWA) the claimant received for the week that ended August 1, 2020.

DECISION:

The October 29, 2020, reference 01, decision is reversed. The claimant was not unemployed to any extent, did not meet the availability requirement, and was not eligible for benefits for the period of April 19, 2020 through September 12, 2020. The employer's account shall not be charged for benefits for that period. The claimant is overpaid \$1,102.00 in regular benefits for four weeks between June 7, 2020 and August 1, 2020. The claimant is overpaid \$1,800.00 in FPUC benefits for three weeks between June 7, 2020 and July 25, 2020.

This matter is **remanded** to the Benefits Bureau for entry of an additional overpayment decision regarding the \$300.00 in Lost Wages Assistance (LWA) the claimant received for the week that ended August 1, 2020.



James E. Timberland
Administrative Law Judge

January 25, 2021
Decision Dated and Mailed

jet/scn